

TAX DITCH RIGHT-OF-WAY TASK FORCE

January 25, 2008

Minutes

Representative Thornburg called the meeting to order at 10:05 a.m.

The following Task Force Members were present: Lauren Alberti, Mike Brown, Fred Mott, Bill Vanderwende, Carlton Fifer, Frank Piorko, Dave Toomey, Gary Dodge, Rep. Pam Thornburg, Elton Murray, Ed Jestice, and Richard James. Also present were the following: Debbie Absher (Sussex Conservation District), Michael Early (PLS), Bob Enright, Michele Garner, and Brooks Cahall (DNREC). Task Force Members absent: Rep. V. George Carey, Doug Corey.

A motion was made and passed to approve the agenda.

A motion was made and passed to approve the minutes of December 18, 2007, as written.

Frank Piorko distributed a summary of the review points discussed at the last meeting for Recommendations #1 – 5. The discussion began on the review of the Draft Recommendations beginning with Recommendation #6. It was determined that Recommendation #5 needed to be re-visited before proceeding with #6.

Discussion resumed on Recommendation #5 regarding replacement of permanent structures “grandfathered” in and new structures permitted within a tax ditch right-of-way. It was determined that replacement of permanent structures within 50’ of top of bank would be reserved for hardship cases. Hardship would be defined as the property owner’s ability to use the property being adversely affected if a structure is not permitted within the 50’ right-of-way. A standard of reasonableness would need to be set. Mr. Dodge agreed to draft these standards.

The replacement of permanent structures “grandfathered” in and new structures permitted outside of the 50’ right-of-way, yet within the maximum construction right-of-way defined in the proposed Tier 1, 2, or 3 was discussed. A standard of reasonableness would need to be set. Mr. Dodge agreed to draft standards.

The Court Order Change process was discussed. A handout was distributed showing that this process is extensive and involves a lot of staff time. It was suggested that a written agreement, signed by the landowner, the Tax Ditch Managers, and recorded in the Recorder of Deeds Office along with a survey or map indicating type and placement of permitted structure, may be an alternative to the Court Order Change process. This “Written Agreement” would be used when the right-of-way is to remain intact, however, a permanent structure is permitted within the right-of-way. This option will need to be included in a Recommendation.

Recommendation #6 and #7 were discussed in more detail. A modification is needed to these recommendations in regards to the type of committee needed. It was noted that an “Advisory” Committee may not be the correct term. An “Appellate” board which can make a binding decision would perhaps be a better fit.

TAX DITCH RIGHT-OF-WAY TASK FORCE

January 25, 2008 Minutes

Page 2 of 2

Part of the recommendation for an appellate (appeals) board would be to include that arbitration before this board would be binding. It was determined that arbitration would not be mandatory due to if a landowner cannot reach agreement through a "Written Agreement" or "Court Order Change", and chooses not to participate in binding arbitration then they can petition Superior Court to have the Board of Tax Ditch Commissioner's investigate per Title 7, Chapter 41, subsection 4189 (3).

The makeup of the proposed Appellate (Appeals) Board was discussed. Three options were initially discussed:

- 1) DNREC Secretary appoints members, some of which could be members of the present Task Force.
- 2) DACD Executive Board appoints members from each county.
- 3) Legislative Appointments – by Senate and House, etc. (similar to present Task Force appointments).

It was determined that options 2 and 3 would be explored further. Option 1 was tabled by the Chair.

A question was raised as to if a hearing officer (appeals board member) could be held liable for decisions. Frank Piorko will check with DNREC's Deputy Attorney General regarding this.

It was brought up that language to protect the Tax Ditch (liability concerns) if grandfathered structures are damaged during maintenance operations needs to be added to Recommendation #4.

For discussion at the next meeting:

- Appeals Board – appointment process and other concerns.
- Appeals Board – determine what authority does Tax Ditch Managers & Board have (will this be binding arbitration?).
- New Development – costs.

The next meeting of the Tax Ditch Right-of-Way Task Force is scheduled for Friday, February 15, 2008, 10:00 a.m. – 12:00 p.m. in the DNREC Secretary's conference room.

Meeting adjourned at 12:22 p.m.

Respectfully Submitted



Michele L. Garner
Administrative Specialist II